

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-873V

Filed: September 13, 2024

ELAINE MONTANA,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Master Horner

*Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for petitioner.*

*Matthew Murphy, U.S. Department of Justice, Washington, DC, for respondent.*

## **DECISION AWARDING DAMAGES<sup>1</sup>**

On July 17, 2020, Elaine Montana filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a Table shoulder injury related to vaccine administration (“SIRVA”) as result of a flu vaccine received on November 21, 2017. (ECF No. 1.)

On October 16, 2023, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. (ECF No. 55.) On September 13, 2024, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$73,704.50, representing \$72,500.00 in pain and suffering and \$1,204.50 in past unreimbursable expenses related to her vaccine-related injury. (ECF No. 71.) In the Proffer, respondent represented that petitioner agrees with the proffered award. (*Id.*) Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

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<sup>1</sup> Because this document contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the document will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum payment of \$73,704.50.00, representing \$72,500.00 in compensation for pain and suffering and \$1,204.50 in compensation for past unreimbursable expenses, in the form of a check payable to petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Daniel T. Horner**  
Daniel T. Horner  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

ELAINE MONTANA,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

No. 20-873V

Special Master Horner

ECF

**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On July 17, 2020, Elaine Montana (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine she received on November 21, 2017. Petition at 1. On October 16, 2023, the Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 55.

## **I. Items of Compensation**

### A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$72,500.00 in pain and suffering.

*See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

### B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be

awarded past unreimbursable expenses in the amount of \$1,204.50. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

## **II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Special Master's decision and the Court's judgment award the following<sup>1</sup>: a lump sum payment of \$73,704.50, in the form of a check payable to petitioner.

## **III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Elaine Montana:	<b>\$73,704.50</b>
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Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Director  
Torts Branch, Civil Division

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Deputy Director  
Torts Branch, Civil Division

ALEXIS B. BABCOCK  
Assistant Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

/s/ Matthew L. Murphy  
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